

Paul J. Riehle (SBN 115199)  
paul.riehle@faegredrinker.com  
**FAEGRE DRINKER BIDDLE & REATH LLP**  
Four Embarcadero Center  
San Francisco, California 94111  
Telephone: (415) 591-7500  
Facsimile: (415) 591-7510

Christine A. Varney (*pro hac vice*)  
cvarney@cravath.com  
Katherine B. Forrest (*pro hac vice*)  
kforrest@cravath.com  
Gary A. Bornstein (*pro hac vice pending*)  
gbornstein@cravath.com  
Yonatan Even (*pro hac vice*)  
yeven@cravath.com  
M. Brent Byars (*pro hac vice*)  
mbbyars@cravath.com

[mbyars@cravath.com](mailto:mbyars@cravath.com)  
**CRAVATH, SWAINE & MOORE LLP**  
825 Eighth Avenue  
New York, New York 10019  
Telephone: (212) 474-1000  
Facsimile: (212) 474-3700

*Attorneys for Plaintiff Epic Games, Inc.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

## EPIC GAMES, INC.,

Plaintiff.

APPLE INC

vs.

**Defendant**

No. 3:20-CV-05640-YGR

**DECLARATION OF NICHOLAS  
PENWARDEN IN FURTHER  
SUPPORT OF PLAINTIFF  
EPIC GAMES INC.'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER  
AND ORDER TO SHOW CAUSE WHY  
A PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE**

Date: August 24, 2020, 3:00 p.m.

Courtroom: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez-Rogers

1 I, Nicholas Penwarden, declare as follows:

2       1. I am Vice President of Engineering at Epic Games, Inc. (“Epic”). I submit this  
3 declaration pursuant to the Court’s Order Permitting Limited Reply Brief dated August 21, 2020  
4 (ECF No. 38), and in further support of Plaintiff Epic Games Inc.’s Motion for a Temporary  
5 Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue  
6 (ECF No. 17) (“Epic’s TRO Motion”). I submitted a declaration in support of Epic’s TRO  
7 Motion on August 17, 2020, in which I described my background, current position, and job  
8 responsibilities in paragraph 2.

9       2. Apple’s statement that it intends to terminate all of Epic’s accounts with the Apple  
10 Developer Program and terminate Epic’s access to, among other things, “[a]ll Apple software,  
11 SDKs, APIs, and developer tools”, including for purposes of developing and supporting the  
12 *Unreal Engine*, has prompted numerous inquiries and expressions of concern to Epic from *Unreal*  
13 *Engine* licensees. Specifically, Epic’s licensees have expressed concern that Apple’s actions  
14 would disrupt and impede Epic’s ability to continue to support *Unreal Engine* for Apple devices  
15 and for Epic’s engineers to continue to provide support for iOS and macOS projects.

16       3. Certain licensees have stated to Epic that, in light of the uncertainty resulting from  
17 Apple’s actions, they would need to take affirmative steps to explore alternative engines for  
18 upcoming high-profile projects. Other licensees that are already using the *Unreal Engine* for  
19 projects in development have stated that they planned to make their projects available on iOS and  
20 macOS and are concerned that their projects will now be disrupted, and that they will not be able  
21 to launch on iOS or macOS as they had planned. The *Unreal Engine* licensees that have  
22 contacted Epic on this issue are not limited to game developers but include licensees that use  
23 *Unreal Engine* for other lines of business, including automotive design.

24       4. Epic could not, in the time available, obtain the consent of these licensees to be  
25 publicly named, and so maintains the confidentiality of the licensees who have already reached  
26 out in order to respect the confidential nature of the communications, the fact that some of the  
27 licensees may consider their future applications and projects to be confidential, and the fact that  
28 some of the licensees may be concerned about taking any public action that may be viewed by

1 Apple as adverse.

2 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
3 and correct and that I executed this declaration on August 22, 2020 in Semora, North Carolina.

4   
5 Nicholas Penwarden (Aug 22, 2020 20:07 EDT)  
6 Nicholas Penwarden

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28